

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

WILLIE TINSLEY SMITH, #1136426

Petitioner,

v.

Case No. 2:21cv414

HAROLD W. CLARKE, Director,
Virginia Department of Corrections,

Respondent.

FINAL ORDER

Before the Court is a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, ECF No. 6, and Respondent's motion to dismiss. ECF No. 11. On October 9, 2019, the Circuit Court for the City of Hampton convicted Petitioner, following a jury trial, of first-degree murder and statutory burglary while armed with a deadly weapon. Petitioner was sentenced to serve two life sentences. In his petition, Petitioner challenges the constitutionality of this conviction and sentence.

The matter was referred for disposition to a United States Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(B)-(C), Federal Rule of Civil Procedure 72(b), Local Civil Rule 72, and the April 2, 2002 Standing Order on Assignment of Certain Matters to United States Magistrate Judges. In a Report and Recommendation entered on August 8, 2022, ECF No. 27, the Magistrate Judge recommended the motion to dismiss be granted, and the petition be denied and dismissed with prejudice.

The parties were advised of their right to file written objections to the Report and Recommendation. On September 6, 2022, Petitioner filed a written objection with the Court. ECF No. 28. However, the deadline to file an objection expired on August 22, 2022, fourteen days after having been served a copy of the Report and Recommendation. Failure to file timely specific written objections to the findings and recommendations results in a substantive waiver of the right to appeal from a judgement of this Court based on such findings and recommendations. *Thomas v. Arn*, 474 U.S. 140 (1985); *Carr v. Hutto*, 737 F.2d 433 (4th Cir. 1984), cert. denied, 474 U.S. 1019 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984). Nevertheless, the objection was considered in the Court's decision here. The Court finds that Petitioner's Objection (ECF No. 28) raises no new arguments or considerations from his Amended Complaint (ECF No. 6).

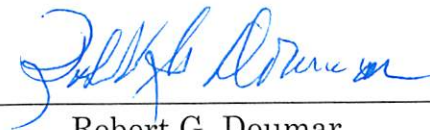
Having reviewed the record, the Court agrees with the Report and Recommendation on the grounds stated by the Magistrate Judge and **ADOPTS** and **APPROVES** the Report and Recommendation, ECF No. 27, in its entirety as the Court's own opinion. Accordingly, the Respondent's motion to dismiss, ECF No. 11, is **GRANTED**, and the Amended Petition, ECF No. 6, is **DENIED** and **DISMISSED WITH PREJUDICE**. It is **ORDERED** that judgment be entered in favor of Respondent.

The Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a *written* notice of appeal with the

Clerk of the Court at the Walter E. Hoffman United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date judgment is entered. Because the Petitioner has failed to demonstrate a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c) and Federal Rule of Appellate Procedure 22(b)(1), the Court declines to issue a certificate of appealability. *See Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003).

The Clerk is **DIRECTED** to forward a copy of this Order to the Petitioner and counsel of record for the Respondent.

It is so **ORDERED**.



Robert G. Doumar
United States District Judge

Norfolk, Virginia
September 8, 2022